

Message Text

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ACTION L-03

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R 090956Z AUG 76
FM AMEMBASSY SOFIA
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E.O. 11652: NA
TAGS: AFSP, BU
SUBJECT: BULGARIAN LABOR CONTRACT

REF: (A) STATE 154374; (B) STATE 85266; (C) SOFIA 0995

1. SUMMARY: LATEST NEGOTIATING SESSION WITH BUREAU FOR SERVICES TO DIPLOMATIC CORPS (BODK) PRODUCED AGREEMENT ON NUMBERED ITEMS IN EMBASSY INTERPRETIVE PARAGRAPHS (REF C, PARA 3, A-H), BUT BODK BALKS AT ATTACHING ADDENDUM TO CONTRACT AND AT SECOND SENTENCE OF DEPT'S OPENING PARAGRAPH (REF B, PARA 3). TO OVERCOME FIRST DIFFICULTY, BODK PROPOSES EXCHANGE OF NOTES INCORPORATING ADDENDUM, WHICH WE BELIEVE SHOULD BE ACCEPTABLE. EMBASSY ALSO BELIEVES FIRST SENTENCE OF DEPT'S OPENING PARAGRAPH IS SUFFICIENTLY PROTECTIVE AND THAT SECOND SENTENCE CAN BE DROPPED. NEW INSTRUCTIONS REQUESTED. END SUMMARY

2. EMBASSY ON JULY 26 SENT NOTE TO MFA OFFERING TO SIGN BULGARIAN LABOR CONTRACT PROVIDED THERE WAS ATTACHED THERETO ADDENDUM CONTAINING LANGUAGE REF B, PARA 3, AND REF C, PARA 3, A THROUGH H. DCM AND ADMINOFF MET WITH BODK REPS AUGUST 4 AND 5 AND, AFTER DISCUSSION, RE-DRAFTED EMBASSY'S INTERPRETIVE PARAGRAPHS PRODUCING NEW TEXT WHICH WE THOUGHT WOULD BE ACCEPTABLE TO BOTH SIDES.

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3. AS WAS TO BE EXPECTED, HOWEVER, BODK STRONGLY

RESISTED IDEA OF MAKING STATEMENT OF RESERVATIONS AND INTERPRETATIONS FORMAL ADDENDUM TO EACH SIGNED LABOR CONTRACT. CONTRACTS ARE SIGNED BETWEEN EMBASSY AND INDIVIDUAL EMPLOYEES, BODK POINTED OUT, AND THUS LANGUAGE WHICH MAKES IT SEEM INSTRUMENT NEGOTIATED BETWEEN TWO GOVERNMENTS IS INAPPROPRIATE. AFTER MUCH DISCUSSION, BODK REPS PROPOSED THAT EMBASSY FOLLOW SIGNING OF LABOR CONTRACTS WITH DIPLOMATIC NOTE STATING ITS RESERVATIONS. BODK WOULD THEN REPLY WITH NOTE ACCEPTING AND AGREEING TO THEM. AFTER STILL FURTHER DISCUSSION FOLLOWING DAY, BODK AGREED TO OUR COUNTER-PROPOSAL, MADE AD REFERENDUM, THAT EXCHANGE OF NOTES PRECEDE RATHER THAN FOLLOW SIGNING OF CONTRACTS. US NOTE WOULD STATE "THE EMBASSY IS PREPARED TO SIGN THE LABOR CONTRACT WITH RESPECT TO ITS EMPLOYEES UPON RECEIPT OF A NOTE FROM THE MINISTRY STATING THAT THESE UNDERSTANDINGS AND OBSERVATIONS ARE ACCEPTED AND AGREED TO BY THE MINISTRY." BULGARIAN NOTE WOULD STATE, "MINISTRY ACCEPTS AND AGREES TO THE UNDERSTANDINGS AND OBSERVATIONS CONTAINED IN THE EMBASSY'S NOTE OF"

4. COMMENT: EMBASSY BELIEVES EXCHANGE OF NOTES WILL PROVIDE ALL THE SAFEGUARD WE NEED, AND THAT IT IS NOT NECESSARY TO CONTINUE TO PRESS THAT ADDENDUM BE AFFIXIED TO EACH CONTRACT SIGNED.

5. IN ADDITION TO METHODOLOGICAL PROBLEM, TWO LANGUAGE PROBLEMS REMAIN, FIRST OF WHICH IS QUITE MINOR: BECAUSE NO BULGARIAN AGENCY IS A SIGNATORY TO CONTRACT (WHICH IS BETWEEN EMBASSY AND EMPLOYEE), BODK REQUESTS WORDS "THE TWO PARTIES" BE SUBSTITUTED FOR "UNITED STATES GOVERNMENT" IN FIRST SENTENCE OF DEPARTMENT'S "SAVINGS CLAUSE" (REF BN PARA 3). IT WOULD THEN READ: "THE ACT OF SIGNING THE LABOR CONTRACT BY THE TWO PARTIES MAY NOT BE CONSTRUED AS A WAIVER OF THE SOVEREIGN IMMUNITY OF THE UNITED STATES GOVERNMENT NOR AS A MODIFICATION OF THE PRIVILEGES AND IMMUNITIES DERIVED FROM GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW AND PRACTICES, FROM LIMITED OFFICIAL USE

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THE VIENNA DIPLOMATIC CONVENTION, OR FROM TREATIES AND AGREEMENTS IN FORCE BETWEEN THE UNITED STATES GOVERNMENT AND THE GOVERNMENT OF BULGARIA."

6. COMMENT: WE BELIEVE THIS IS ACCEPTABLE.

7. SECOND LANGUAGE PROBLEM MAY BE MORE SERIOUS.
BODK REPS TOOK STRONG EXCEPTION TO SECOND SENTENCE

OF SAVINGS CLAUSE WHICH READS: "NOR SHALL THE
SIGNING OF THIS CONTRACT SUBJECT THE UNITED
STATES GOVERNMENT, ITS DEPARTMENTS OR ESTABLISHMENTS
OR ITS OFFICERS OR EMPLOYEES TO ANY JUDICIAL OR ADMIN-
ISTRATIVE ACTION, WHETHER CIVIL OR PENAL IN NATURE,
PROVIDED BY BULGARIAN LAW OR ANY OTHER LAW NOW OR IN
THE FUTURE." BODK REPS ARGUED THAT POSITION OF USG,
ITS DEPTS, ESTABLISHMENTS AND OFFICIALS IS FULLY
PROTECTED BY PREVIOUS SENTENCE LANGUAGE ON SOVEREIGN
IMMUNITY OF US AND OTHER RECOGNIZED PRIVILEGES AND
IMMUNITIES. EMBOFFS COUNTERED THAT MINISTRY SHOULD
NOT OBJECT TO SAYING TWICE WHAT WAS WORTH SAYING
ONCE. ALSO OFFERED TO RECOMMEND ADJUSTING LANGUAGE
IF THERE WAS FEAR IT WAS AMBIGUOUS ENOUGH TO CONFER
IMMUNITY ON BULGARIAN CITIZEN EMPLOYEES OF USG. BODK
REPS REMAINED ADAMANT THAT SENTENCE SHOULD BE REMOVED
AS UNNECESSARY, BUT WOULD NOT ADDUCE ANY FURTHER
EXPLANATION OF THEIR OBJECTION.

8. COMMENT: WE ARE NOT SURE OF PRECISE GROUND OF
BODK OBJECTION TO SECOND SENTENCE BUT IN ANY CASE
BELIEVE THAT LANGUAGE OF FIRST SENTENCE SHOULD
INDEED BE SUFFICIENT TO MAKE THE POINT THAT NEITHER
USG NOR ITS AGENTS (OF US NATIONALITY) IN BULGARIA
ARE LIABLE TO SUIT ARISING FROM LABOR CONTRACT.
IF DEPT DOES NOT AGREE, REQUEST WE BE PROVIDED
WITH APPROPRIATE ADDITIONAL ARGUMENTATION.

9. RECOMMENDATION: NEXT FOLLOWING TELEGRAM PROVIDES
TEXT OF OUR PROPOSED NOTE WITH DISPUTED SENTENCE IN
BRACKETS. WE BELIEVE PROPOSED EXCHANGE OF NOTES,
A STEP BODK HAS THUS FAR BEEN UNWILLING TO TAKE
WITH RESPECT TO ANY OTHER EMBASSY, WILL SUFFICIENTLY
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PROTECT OUR POSITION AND THEREFORE RECOMMEND APPROVAL
OF DRAFT NOTE WITH BRACKETED SENTENCE OMITTED. REQUEST
DEPT'S CONCURRENCE.
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